

## **EXHIBIT F**

VOLUME: 1 PAGES: 1 - 90 EXHIBITS: 1 - 14

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

----- X

LEXINGTON INSURANCE COMPANY  
and NATIONAL UNION FIRE  
INSURANCE COMPANY OF  
PITTSBURGH, PA,

Plaintiffs,

Civil Action

vs.

No. 04-11109 RGS

VIRGINIA SURETY COMPANY, INC.,  
Defendant.

----- X

RULE 30 (b)(6) DEPOSITION OF  
LEXINGTON INSURANCE COMPANY  
(By its designee John B. Gould)

Tuesday, August 1, 2006

12:56 p.m.

Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.

One Financial Center

Boston, Massachusetts 02111

Reporter: Dana Welch, CSR, RPR

Certified LiveNote Trainer

John B. Gould

08/01/2006

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2 For the Plaintiffs:</p> <p>3 THE MCCORMACK FIRM, LLC</p> <p>4 One International Place</p> <p>5 Boston, Massachusetts 02110</p> <p>6 617.951.2929 Fax: 617.951.2672</p> <p>7 rmaselek@mccormackfirm.com</p> <p>8 By: Robert J. Maselek Jr., Esq.</p> <p>9</p> <p>10 For the Defendant:</p> <p>11 MINTZ, LEVIN, COHN, FERRIS,</p> <p>12 GLOVSKY AND POPEO, P.C.</p> <p>13 One Financial Center</p> <p>14 Boston, Massachusetts 02111</p> <p>15 617.542.6000 617.542.2241</p> <p>16 ncramb@mintz.com</p> <p>17 By: Nicholas C. Cramb, Esq.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 4</p> <p>1 PROCEEDINGS</p> <p>2 JOHN B. GOULD,</p> <p>3 having been satisfactorily identified by the</p> <p>4 production of his driver's license, and duly sworn</p> <p>5 by the Notary Public, was examined and testified as</p> <p>6 follows:</p> <p>7 DIRECT EXAMINATION</p> <p>8 BY MR. CRAMB:</p> <p>9 Q. Can you please state your name for the</p> <p>10 record.</p> <p>11 A. John Gould.</p> <p>12 MR. CRAMB: Mr. Maselek, do we agree to</p> <p>13 reserve all objections except as to form until</p> <p>14 trial?</p> <p>15 MR. MASELEK: That's fine.</p> <p>16 MR. CRAMB: And does your witness want</p> <p>17 30 days to read the transcript?</p> <p>18 MR. MASELEK: Yes.</p> <p>19 MR. CRAMB: Waive notary.</p> <p>20 Q. Mr. Gould, my name is Nick Cramb, and I</p> <p>21 represent the defendant in this case, Virginia</p> <p>22 Surety Company.</p> <p>23 I'm going to ask since we are creating a</p> <p>24 record of your testimony that you answer my</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX</p> <p>2 WITNESS:</p> <p>3 JOHN B. GOULD</p> <p>4</p> <p>5 EXAMINATION: PAGE:</p> <p>6 BY MR. CRAMB 4</p> <p>7 EXHIBIT NO. DESCRIPTION PAGE:</p> <p>8 1, Notice of Deposition 6</p> <p>9 2, LU 19852 through LU 19853 22</p> <p>10 3, LU 15644 through LU 15645 25</p> <p>11 4, November 9, 2000 Fax 39</p> <p>12 5, LU 11557 41</p> <p>13 6, May 23, 2001 memo Messery to Jones 42</p> <p>14 7, LU 01477 through LU 01479 43</p> <p>15 8, ME 00448 through ME00550 and ME 03796 48</p> <p>16 through ME 03843</p> <p>17 9, LU 01485 through LU 01487 57</p> <p>18 10, LU 11547 and LU 20850 61</p> <p>19 11, LU 20321 64</p> <p>20 12, LU 12149, 12136, 12137 AND 12273 66</p> <p>21 13, LU 21733 72</p> <p>22 14, E-mail chain beginning LU 22422, 79</p> <p>23 non-sequential</p> <p>24 Exhibits retained by Attorney Cramb.</p>	<p style="text-align: right;">Page 5</p> <p>1 questions verbally instead of nodding or other</p> <p>2 gestures like uh-huh, and that you answer all of my</p> <p>3 questions, including when Mr. Maselek makes an</p> <p>4 objection, unless he instructs you not to answer.</p> <p>5 You can take a break at any time as long</p> <p>6 as you've answered a pending question; just let me</p> <p>7 know and I'll be happy to accommodate you.</p> <p>8 And if there's anything that I've said or</p> <p>9 asked that is unclear, please ask me to clarify so</p> <p>10 that we do create a clear record. Is that fair?</p> <p>11 A. Yes.</p> <p>12 Q. What is your address, Mr. Gould?</p> <p>13 A. Home address or business address?</p> <p>14 Q. Let's do both.</p> <p>15 A. Okay. 4 Burnham Lane, Danvers,</p> <p>16 Massachusetts 01923.</p> <p>17 Q. Okay. So that's home?</p> <p>18 A. Home. And 100 Summer Street, Boston,</p> <p>19 Mass.</p> <p>20 Q. And who is your employer?</p> <p>21 A. Lexington Insurance Company.</p> <p>22 Q. What's your position there?</p> <p>23 A. I'm a vice-president and underwriting</p> <p>24 officer of Lexington Insurance Company.</p>

2 (Pages 2 to 5)

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1 first began participating in the program in May of  
 2 2000; is that your understanding?  
 3 A. Yes.  
 4 Q. And what's that based on?  
 5 A. Based on the material that I was provided  
 6 that I reviewed before the deposition.  
 7 MR. CRAMB: Mark that as number two.  
 8 (Exhibit No. 2, LU 19852 through LU 19853,  
 9 marked for identification.)  
 10 Q. Have you seen this document before?  
 11 A. I believe so.  
 12 Q. In connection with preparation for the  
 13 deposition or before?  
 14 A. No. In connection with the preparation  
 15 for the deposition.  
 16 Q. This is or purports to be an account  
 17 summary for an insured by the name of Aimco, which  
 18 is, according to this, part of the National  
 19 Coalition of Property Owners Insurance Program.  
 20 There's a note here that says that at the  
 21 end of each year, we would charge a 100 percent  
 22 rate increase based on annual premium and the  
 23 number of units at the re rate.  
 24 Are you familiar with the premium

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1 structure for the NPS program?  
 2 A. No.  
 3 Q. Do you know what the 100 percent rate  
 4 increase refers to?  
 5 A. A rate increase would be doubling the  
 6 premium for a coverage period.  
 7 Q. But you're not familiar in the context of  
 8 the NPS program what this refers to?  
 9 A. No.  
 10 Q. According to this, I assume an AIG company  
 11 invoiced the broker, First Capital Group, for the  
 12 total premium. Do you have an understanding of how  
 13 that worked?  
 14 A. A general understanding, yes.  
 15 Q. Can you explain that, please.  
 16 A. Well, First Capital would be the broker or  
 17 producer for the risk specialist company and all  
 18 invoices would be to First Capital.  
 19 Q. So premium was collected by First Capital  
 20 and then sent to AIG?  
 21 A. Correct.  
 22 Q. Or whichever AIG company?  
 23 A. Correct.  
 24 Q. And according to this, First Capital was

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1 responsible for invoicing NPS, the risk purchasing  
 2 group for the total premium?  
 3 A. Correct.  
 4 Q. Is that your understanding?  
 5 A. Yes.  
 6 Q. And how does that work? So what role is  
 7 NPS playing with premiums for the NPS program?  
 8 A. NPS would be dealing with First Capital.  
 9 We would, the risk specialist company, would bill  
 10 First Capital; First Capital, in turn, would bill  
 11 NPS or their broker for the business.  
 12 Q. Did any of the AIG companies have any  
 13 contractual relationships with NPS?  
 14 A. Lexington did not. I don't know about  
 15 other AIG companies.  
 16 Q. And this is just in the context of the NPS  
 17 program, of course.  
 18 A. I still don't know. It could -- there are  
 19 many other AIG companies.  
 20 Q. Okay. The final line here is that, "It  
 21 was NPS's responsibility to invoice each individual  
 22 insured for their portion of the premium and send  
 23 us a check for the total policy premium."  
 24 Is it your understanding that NPS was

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1 sending premiums directly to one of the AIG  
 2 companies?  
 3 A. That would not be my understanding.  
 4 MR. CRAMB: Exhibit Number 3.  
 5 (Exhibit No. 3, LU 15644 through LU 15645,  
 6 marked for identification.)  
 7 Q. Have you seen this document before?  
 8 A. I don't believe so.  
 9 Q. When we have been referring to the NPS  
 10 program, is it your understanding that that  
 11 references National Union and Lexington's  
 12 participation in an insurance program, or are we  
 13 referring to National Union or Lexington and  
 14 Virginia Surety's participation in the program?  
 15 A. From our standpoint, it would be Lexington  
 16 and National Union.  
 17 Q. Do the, I guess just in the lines of  
 18 business lines class and the National Union carrier  
 19 section convey your understanding of the NPS  
 20 program and National Union's participation in the  
 21 NPS program?  
 22 MR. MASELEK: Objection.  
 23 THE WITNESS: You're referring to the  
 24 coverage section?

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1 Q. No. Just the line of business, it was a  
2 commercial general liability program; is that  
3 correct?  
4 A. Correct.  
5 Q. And I think you had said property owners  
6 before. The class of business is real estate  
7 owners and managers for, I'm not sure what OL&T  
8 means but apartments, shopping centers, condos and  
9 light commercial; is that --  
10 A. Correct.  
11 Q. -- your understanding?  
12 A. Correct.  
13 Q. And it describes National Union as a  
14 carrier, and generally describes the insurance,  
15 it's my understanding provided by National Union as  
16 1 million per occurrence, with a \$2 million general  
17 aggregate and a self-insured retention of \$250,000  
18 per occurrence?  
19 A. Correct.  
20 Q. Is that your understanding of the  
21 insurance that National Union provided in the NPS  
22 program?  
23 A. Yes.  
24 Q. The complaint -- in the complaint, the

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1 plaintiffs allege that National Union cancelled the  
2 NCOPO program, National Coalition of Property  
3 Owners and Managers program in mid-2002. What does  
4 that mean, that they canceled the program?  
5 A. It means that they initiated a  
6 cancellation notice to the named insureds under the  
7 program to retire from the program.  
8 Q. And do you know why, what was the business  
9 reason for that decision?  
10 A. I believe it was -- had to do with premium  
11 payment.  
12 Q. And what had to do with premium payment?  
13 A. Not being paid the full premium the  
14 company was due for the coverage provided.  
15 Q. And in a very general sense, do you have  
16 an understanding as to where the problem was or  
17 what the issue was?  
18 A. No.  
19 Q. Okay. After cancellation of the NPS  
20 program, did NUFIC or Lexington continue to write  
21 insurance to insureds who had been insured under  
22 the NPS program?  
23 A. I believe it continued to write insurance  
24 or continued coverage provided to insureds that

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1 could prove that they had made payment to their  
2 broker. And I believe that there were, some of the  
3 individual accounts were provided coverage by  
4 Lexington or National Union on an  
5 account-by-account specific underwriting basis.  
6 Q. Where new policies were issued to those  
7 individual insureds?  
8 A. Yes, some of them.  
9 Q. We'll be clear then if I talk about the  
10 NPS program as just involving the insurance  
11 policies that were issued before cancellation in  
12 mid-2002 and post program policies as any policies  
13 issued to insureds from the NPS program after  
14 cancellation?  
15 A. Yes.  
16 Q. Can you explain to me in layman's terms  
17 everything that's involved in the underwriting  
18 aspect as it relates to the NPS program, what --  
19 MR. MASELEK: I'll let him answer. But  
20 I'm going to object for the record that it's  
21 beyond the scope of the topics for which  
22 Mr. Gould's been designated. But I'll let him  
23 answer.  
24 THE WITNESS: Would you repeat the

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1 question, please?  
2 Q. Yeah. What is included within the term  
3 underwriting as it relates to the NPS program; what  
4 does that mean?  
5 A. Well, it would relate to the NPS program  
6 or any other business opportunity. We would obtain  
7 an application from the broker which would spell  
8 out for us the scope of the coverage to be  
9 provided, for example, the number of units, the  
10 number of states the individual units might be  
11 located in, the general -- the overall size of the  
12 account, the loss history of the account, the  
13 financial history of the account, particularly for  
14 those accounts assuming self-insured retention,  
15 competitor information, prior coverage, coverage  
16 expectations from Lexington.  
17 Q. And then using that information, the  
18 underwriters do what?  
19 A. The underwriters would then make an  
20 evaluation of whether the risk was acceptable to  
21 Lexington from, we call an underwriting standpoint,  
22 that the risk met our underwriting criteria, it was  
23 the type of business the company chose to write,  
24 that the premium expectations were in line with

8 (Pages 26 to 29)

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1 MR. MASELEK: Objection.  
2 THE WITNESS: I don't see any wording in  
3 this endorsement that prevents that, no.  
4 Q. Is this a primary or excess insurance  
5 policy?  
6 MR. MASELEK: Objection.  
7 THE WITNESS: In what context?  
8 Q. Is the form a primary or excess form?  
9 MR. MASELEK: Objection.  
10 THE WITNESS: I'll answer that two ways.  
11 The policy without the self-insured retention  
12 endorsement would be considered a primary  
13 policy form.  
14 Q. Okay.  
15 A. The same form with the self-insured  
16 retention endorsement would be considered an excess  
17 policy form.  
18 Q. So the endorsement changes this into a  
19 policy that is excess of a retention; is that  
20 correct?  
21 A. Yes, by the wording in number one, the  
22 "shall pay the ultimate net loss in excess of the  
23 self-insured retention."  
24 Q. And it's not excess of another insurance

1 policy?  
2 MR. MASELEK: Objection.  
3 THE WITNESS: Yes.  
4 Q. Are you familiar with the insurance  
5 policies that Virginia Surety wrote to cover the  
6 self-insured retention for insureds insured under  
7 the NPS program?  
8 A. No.  
9 Q. Do you know if they are fire, extended  
10 coverage, builders risk, installation risk, or  
11 similar coverage?  
12 A. They are not.  
13 Q. Do you know if they are fire insurance?  
14 A. They're not.  
15 Q. And the third seems to relate specifically  
16 or B3 here relates specifically to losses out of  
17 the maintenance or uses of aircraft, autos or water  
18 craft.  
19 A. Uh-huh.  
20 Q. Is it your understanding that with respect  
21 to the Virginia Surety policies in the NPS program  
22 that any of these provisions in 4B, 1, 2 or 3  
23 apply?  
24 A. I don't believe they apply.

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1 policy's limits; is that correct?  
2 A. No. It refers to the self-insured  
3 retention amount.  
4 Q. On page 461, can you tell me generally  
5 what your understanding of the "other insurance  
6 clause," what the purpose of the "other insurance  
7 clause" is?  
8 MR. MASELEK: Objection.  
9 THE WITNESS: The purpose would be to  
10 apportion the responsibility for coverage if  
11 two policies or more than one policy provided  
12 the same coverage for a client or insured.  
13 Q. And can you explain how this "other  
14 insurance clause" operates?  
15 MR. MASELEK: Objection.  
16 THE WITNESS: It stipulates how the  
17 coverage is to be apportioned if the  
18 company -- if the policy is viewed as primary  
19 insurance or viewed as excess insurance.  
20 Q. And does Section 4B dictate under what  
21 circumstances this policy will be an excess  
22 insurance policy --  
23 MR. MASELEK: Objection.  
24 Q. -- as compared to another insurance

1 MR. CRAMB: Number nine.  
2 (Exhibit No. 9, LU 01485 through LU 01487,  
3 marked for identification.)  
4 Q. Note for the record that the number nine  
5 in the right-hand corner of this and the crossed  
6 out "ten" is my handwriting.  
7 MR. MASELEK: Make me wonder what that  
8 other missing exhibit would have been.  
9 Q. Do you know Carol DelloRusso is?  
10 A. Yes.  
11 Q. Who is that?  
12 A. She works for Lexington, I believe as an  
13 assistant vice-president in charge of our coding.  
14 Q. What is coding?  
15 A. Coding is documenting statistically the  
16 risk being underwritten. We have to allocate it  
17 for tax purposes, for annual statement purposes,  
18 for our own loss record purposes, to give  
19 production credit to various offices who produced  
20 the business, to -- and to satisfy in some cases  
21 the need for some detailed coding information for  
22 actuarial purposes or reinsurance purposes.  
23 Q. And specifically what is PPS coding?  
24 A. That is a manual coding used by Lexington.

15 (Pages 54 to 57)



<p style="text-align: right;">Page 58</p> <p>1 Q. What does PPS stand for?</p> <p>2 A. I think it's a Policy Processing System.</p> <p>3 Q. What is manual coding distinguished from?</p> <p>4 A. Machine coding. That is -- most of our</p> <p>5 policies are done through the Lexis. It's an</p> <p>6 automated policy issuance reinsurance cession</p> <p>7 coding system. And once the information is typed</p> <p>8 in, the system will produce the policy, produce the</p> <p>9 coding documentation, produce the reinsurance</p> <p>10 information.</p> <p>11 Policies that for whatever reason don't</p> <p>12 have -- don't fit the Lexis processing system, and</p> <p>13 that system pertains only to Lexington Insurance</p> <p>14 Company policies, a non-Lexington policy for</p> <p>15 example would have to be coded manually by</p> <p>16 Lexington personnel.</p> <p>17 Q. This is a fax from Charles Messery of Risk</p> <p>18 Specialists of New York, which is, as you've</p> <p>19 testified, one AIG entity, to Lexington, another</p> <p>20 AIG entity, regarding the National Coalition of</p> <p>21 Property Owners Program.</p> <p>22 Are you familiar with the attached form</p> <p>23 that Messery sent to DelloRusso?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 60</p> <p>1 THE WITNESS: Well, from this -- this is</p> <p>2 -- if I --</p> <p>3 MR. MASELEK: You can answer.</p> <p>4 THE WITNESS: Okay. This is a little bit</p> <p>5 different. The way our reinsurance is set up,</p> <p>6 there's a different meaning for the word</p> <p>7 "primary." For reinsurance purposes, for</p> <p>8 coverage purposes, any risk attaching at a</p> <p>9 million dollars or less, notwithstanding the</p> <p>10 type of policy used to write the coverage, are</p> <p>11 considered primary by the system. In other</p> <p>12 words, losses are ceded to the primary -- or</p> <p>13 premium is ceded to the primary treaty and</p> <p>14 losses are paid by our primary treaty.</p> <p>15 Our excess treaties attach at limits of</p> <p>16 greater than a million dollars. So it's not</p> <p>17 the type of policy; it's the reinsurance</p> <p>18 treaty cession of the premium that's being</p> <p>19 dictated by the word "primary" in this case.</p> <p>20 Q. Would an excess insurance policy or an</p> <p>21 umbrella insurance policy that was specifically</p> <p>22 excess to an underlying limit of insurance provided</p> <p>23 for in the schedule of underlying insurance that</p> <p>24 had a limit of a million dollars still be</p>
<p style="text-align: right;">Page 59</p> <p>1 Q. And perhaps you just did, but could you</p> <p>2 explain so it's clear what this form is used for?</p> <p>3 A. This is a form completed by the</p> <p>4 underwriter to indicate to the coders what</p> <p>5 information to put, input to the system.</p> <p>6 Q. And does this refer to one of the policies</p> <p>7 that's a part of the NPS program?</p> <p>8 A. I believe so.</p> <p>9 Q. And why does it appear that way?</p> <p>10 A. The issuing company is National Union Fire</p> <p>11 Insurance Company of Pennsylvania. The name and</p> <p>12 address of the insured is referred to as the</p> <p>13 National Coalition of Property Owners and Managers,</p> <p>14 Inc.</p> <p>15 Q. On the line which actually has four</p> <p>16 numbers, 9, 10, 11 and 12 --</p> <p>17 A. Uh-huh.</p> <p>18 Q. -- it appears that this policy was coded</p> <p>19 as a primary policy.</p> <p>20 A. It's indicated to be primary, yes.</p> <p>21 Q. And is it your understanding that all of</p> <p>22 the national -- the NPS program National Union</p> <p>23 policies were coded as primary policies?</p> <p>24 MR. MASELEK: Objection.</p>	<p style="text-align: right;">Page 61</p> <p>1 categorized as primary for this?</p> <p>2 A. No. A million dollars or more -- an</p> <p>3 umbrella policy -- and that is, the standard</p> <p>4 minimum attachment point for an umbrella policy is</p> <p>5 a million dollars, that would be considered an</p> <p>6 excess policy.</p> <p>7 Q. What about a policy that was excess of a</p> <p>8 \$500,000 underlying limit?</p> <p>9 A. That would be considered a primary policy</p> <p>10 from a systems reinsurance coding standpoint.</p> <p>11 MR. CRAMB: We'll mark this as number ten.</p> <p>12 (Exhibit No. 10, LU 11547 and LU 20850,</p> <p>13 marked for identification.)</p> <p>14 Q. There are two documents in Exhibit Number</p> <p>15 10 which are unrelated. At any rate, I've stapled</p> <p>16 them together because my line of questions are</p> <p>17 going to be similar, not because they were attached</p> <p>18 in the production for any reason.</p> <p>19 Are you familiar with what is shown on the</p> <p>20 first page of Exhibit Number 10?</p> <p>21 A. Reasonably familiar, yes.</p> <p>22 Q. What is this screen?</p> <p>23 A. I think this is a PPS screen printed.</p> <p>24 Q. And PPS is the coding system that someone</p>

16 (Pages 58 to 61)

STATE OF NEW YORK ) Pg\_\_of\_\_Pgs

SS:

COUNTY OF NEW YORK )

I wish to make the following changes,  
for the following reasons:

PAGE LINE

11 23 CHANGE: MAURICE H SAVAL

REASON: Correct spelling of Maurice

12 10 CHANGE: MAURICE H SAVAL

REASON: Spelling correction

39 12 CHANGE: delete word "NOTES"

REASON: NOT part of hazard analysis

46 3 CHANGE: delete "individual and"

REASON: to read correctly

66 1 CHANGE: replace P. & with B. &

REASON: Bodily Injury is correct

73 15 CHANGE: delete "It probably would"

REASON: rely on a series of coverage

16 17 18  
CHANGE: bring them to help form

REASON: The coverage provided by the

CHANGE: umbrella policy

REASON: doesn't make sense

CHANGE: in the context of 5910

REASON: Alone policies.

Jack Gould  
Jack Gould, Deponent



## C E R T I F I C A T E

I, JOHN B. GOULD, do hereby certify that I have read the foregoing transcript of my testimony, and further certify that it is a true and accurate record of my testimony (with the exception of the corrections listed below):

Page	Line	Correction
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Signed under the pains and penalties of perjury this 22 day of August, 2006.

  
JOHN B. GOULD